**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.5662 OF 2005**

**IN**

**FIRST APPEAL NO.2229 OF 2005**

Indrayani Pundlik Jadhav and others ...Applicants

Vs.

Ashok Govind Shihorkar and others ...Respondents

Mr.S.A.Ghaisas for the Applicants
Mr.M.M.Sathye for the Respondent Nos. 1 to 5.
Mr.S.S.Jinsiwale for Respondent Nos.6 and 7.

**CORAM: A.S.OKA, J.**
**DATED: APRIL 21,2006.**

**P.C.:**

1. Heard Advocate for the Applicant and Advocate for the Respondent Nos.1 to 5.

2. The First Appeal preferred by the Applicants is for challenging the decree of specific performance of Agreement for sale of immoveable property. The finding of the Trial Court is that the Applicant No.1 received a sum of Rs.1,21,000/- under the suit agreement from the original Plaintiffs. The Advocate for the Applicants states that the specific case of the Applicants is that the Applicant No.1 has not received the said amount. It is also not in dispute that the balance consideration of Rs.1,50,000/-has been

deposited by the original Plaintiffs with the trial Court.

3. By this application the Applicants are seeking stay of execution of the decree for specific performance. If the finding of the Trial Court is that the Applicant No.1 has received a sum of Rs.1,21,000/-, unconditional stay cannot be granted. If the Applicants desire to avoid execution of the sale deed, they must deposit the said amount in the Trial Court without prejudice to their rights and contentions in the Appeal.

4. So far as the clauses C and D of the operative part of the decree are concerned, it is not necessary to grant stay. Hence, Civil Application is disposed of by passing the following order :

i) Clause B of the operative part of the impugned Judgment and Decree shall not be executed till the final disposal of the Appeal subject to the condition of the Applicants depositing with the Trial Court a sum of Rs.1,21,000/- within a period of twelve weeks from toady.

iii) If the amount is not deposited within stipulated period, stay granted will stand vacated without reference to the court.

iv) It is made clear that the deposit of the said amount will be without prejudice to the rights and contentions of the Applicants in the pending First Appeal.

v) If the amount of Rs.1,21,000/- is deposited with the Trial Court, the Trial Court will invest the same in fixed deposited in any nationalised bank initially for a period of three years and thereafter the fixed deposit shall be renewed from year to year till the final disposal of the Appal.

vi) The sum of Rs.1,50,000/- deposited by the original Plaintiffs will also be invested by the Trial Court in the same manner.

vii) The order regarding disbursement of the said amounts with accrued interest thereon will be passed at the time of final disposal of the Appeal.

. No order as to costs.

**Judge.**